IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.598 OF 2005

Municipal Corporation of the
City of Pune. .. .. Appellant
Versus
Shri Kanakdas Raju Shetty .. Respondent

Mr.R.M.Pethe h/f R.G.Ketkar for appellant
Mr.S.S.Shah for respondent

CORAM : P.V.KAKADE, J.

DATE : 1ST SEPTEMBER, 2005.

P.C.:

1. The appellant-public body has filed this appeal against the judgment and order passed by District Judge, Pune dated 29/30-4-2002 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, P.M.C. dated 25.4.1995 decreeing the plaintiff's suit with declaration that the notice dated 20.12.1990 bearing No.BCO/7242 issued by the defendant Corporation to the plaintiff was illegal and demanding demolition of the mezzanine floor of the plaintiff's hotel and issued perpetual injunction against the defendant. It was further declared that the mezzanine floor of the plaintiff was since 1982 and the plaintiff

was entitled to retain it as it was permitted as per the building Rules which were in existence in the year 1981-82.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit against the defendant-Corporation on the ground that his shop situated in Banali Cooperative Housing Society at Pune is legally constructed building and the Corporation had no right to demolish any part of the said shop or his hotel which is being run under a valid licence. The defendant-Corporation denied the plaintiff's case claiming that the plaintiff had constructed unauthorised mezzanine floor and therefore, action was taken by the Corporation by issuing the impugned notice under Section 478(1) of the Bombay Provincial Municipal Corporation Act, 1949. The defendant contested the suit on various grounds, inter alia, submitting that the notice was legal and valid and the plaintiff had suppressed material facts from the Court regarding the suit structure was not in existence. It was alleged that it was unauthorised structure and therefore, the defendant

Corporation was legally bound to demolish the same.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the notice issued by the defendant calling upon the plaintiff to demolish the mezzanine floor admeasuring 20 x 12 ft. and the loft of the dining hall was illegal. It was further held that the plaintiff had proved that the structures were in existence since 1980-81 within the knowledge of the officers of the Corporation when completion certificate was issued to the building. It was further held that the plaintiff therefore was entitled for protection from demolition sought to be made by the defendant Corporation and as such the declaration to the effect that the impugned notice void and ab-initio came to be granted and suit was decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties and on the basis of available evidence came to the conclusion that the findings recorded by the learned trial judge were on the basis of legal and proper evidence and therefore, were acceptable in law and as such the appeal came to be dismissed. Hence the present appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. Though the learned counsel for the appellant took me through the judgments of both the courts and voluminous compilation filed on record, it is clear that the crux of the matter is in respect of whether the suit structure was in existence in the year 1981-82 or not and once it is held by both the courts below that the evidence on record was sufficient to show that the suit structure was in existence since the year 1981-82, then the notice is definitely rendered invalid. In this regard it must be noted that the plaintiff deposed on oath that since beginning there was mezzanine floor in the shop admeasuring 11’ x 30’. According to him, when the society gave possession of the shop to him the mezzanine floor was in existence and in 1982 when he had applied for licence. He had produced the building plan and after verifying the same, Corporation granted the licence to him. He has produced on record Xerox copy of the said plan. The Corporation was called upon to produce the original plan, which was in their custody. However, they failed to produce it and therefore, the learned trial judge allowed the plaintiff

to produce the Xerox copy of the plan, which was taken on record as secondary evidence. The learned counsel for the appellant vehemently urged that while admitting the secondary evidence the trial court did not observe the evidential rules contemplated under Section 63 of the Evidence Act. However, in this regard it must be noted that it cannot be overlooked that the Corporation was specifically called upon to produce the original building plan, which was in their custody. However, without any explanation they refused to do so and on that consideration the secondary evidence was allowed to be produced in support of the plainitff's case. In view of the facts and circumstances both the courts have rightly allowed the secondary evidence observing that the suit structure was in existence in the year 1981-82 when the plaintiff has occupied the premises.

5. Once this position made clear, the perusal of the judgment of the lower appellate court definitely shows that the evidence on record is properly appreciated. The observation made with regard to the provision of Section 53 of the M.R.T.P. Act by the learned lower appellate court judge also appear to be legal and proper on the basis of relevant facts.

6. Besides this aspect, it must be noted that both the courts have concurrently recorded the findings to the effect that the suit structure was in existence in the year 1981-82 and on that basis the suit notice was rendered void. These concurrent findings of facts cannot be disturbed by the High Court, as it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. This rule is especially applicable to the present set of fact when both the courts below are seen to have properly appreciated the factual as well as legal aspects of the dispute on merits and therefore, I have no hesitation to hold that the appeal has no merits and hence it stands dismissed with no order as to costs.